1941. File No. O Goods /41

Legal DEPARTMENT
A BRANCH

Subject:—

Opinions under the
Indian Sale of Goods Act, 1930

p.3

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Ltd. Scott. Slip. 21 A

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VERY URGENT. 8

No. 7592

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 28th August 1941.

From

Z.N. Moos, Esquire, Bar-at-Law, I.C.S.
Remembrancer of Legal Affairs;

To

The Director of Public Health
For the Government of Bombay, Poona.

Subject:- Loss of goods in transit due to enemy action.

Sir,

With reference to yur letter No. 70-11852A, dated the 22nd August 1941, on theabove subject, I have thehonour to state that it appears from thecopy of thei·voice that the contract made in thepresent case is one for the sale of goods to be carried by sea at a price which covers cost, insurance and freight. It is therefore a c.i.f. contract andthe delivery of the invoice, billof lading etc, is symbolical delivery of the goods purchased placing thesame at therisk of the Assistant Director of Public Health, Vaccine Institute, Belgaum and entitling the seller to the payment of thier price (see Mulla's Sale of Goods Act, pages 213, 214and 215). Consequently the right to make a claim against theUnderwriter for loss of goods in transit vests in the Assistant Director of Public Health. The legal position stated in the letter of Ferries andCompany, Ltd. to the Assistant Director of Public Health, ~~XXXXXXXXX~~ dated the7th June 1941 appears to be correct. There is therefore no legal objection to the Assistant Director of Public Health authorising theFerries and Company, Ltd. to make a claim against the Underwriter and to collect theamount.

2. Copies of thecorrespondence received with your letter under reference are returned herewith.

I have the honour tobe,
Sir,
your most obedient servant,

O.C. Sd/-
28/8
For Remembrancer of Legal Affairs.

V.VK.
24/4/56.

Forwarded through the General Department through whom the reference should have been made. (Vide Rule 20(4) of the Law Officers' Rules).

No. 6432.

Office of the

Remembrancer of Legal Affairs,

Bombay Castle. 24th July 1941,

From

P.N.Moos, Esq., Bar-at-Law, I.C.S.

Remembrancer of Legal Affairs;

To

The Divisional Engineer Telegraphs,

Bombay Division, BOMBAY.

Subject:- Sale of scrap wire to Mr.Yusufally Nizamuddin.

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Sir,

With reference to your letter No.S-1, dated the 21st/23rd June 1941, on the above subject, I have the honour to state as under.

2. The main question raised for consideration in your letter under reference is whether the purchaser Yusufally Najmuddin is entitled to withhold payment of thebalance of the price of scrap iron wire delivered to him on the ground of short delivery.

3. Section 37(1) of the Indian Sale of Goods Act, 1930 provides that where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he shall pay for them at the contract rate. But by accepting a lesser quantity the buyer, although he must pay for it at the contract rate, does not preclude himself from claiming damages for short delivery(Gorrison v.Perrin, 1857,2KK 2 C.B.N.S. 681,109 R.R.830; Bask & Co. v. Szymanowski, 1924,A.C. 43,Mulla's Sale of Goods Act, page199). It appears clear from the communication of the Sub-divisional Officer to Mr.Yusufally Najmuddin and the reply of the latter at pages 5 and 7 of File No.S.1. forwarded with your letter that what was offered for sale and agreed to be purchased was a definite and not an approximate quantity of

V.V.K.
4/4/1956.

16330 lbs. of iron wire. Since however Mr. Yusufally accepted only 15199lbs. of iron wire he is bound to pay theprice of the same at thecontract rate, although it would be open to him to sue for damages for short delivery. Government may sue Mr. Yusufally for hebalance of the price and thequestion of damages would be determined by the Court if he makes a counter-claim for damages by way of equitable set-off on payment of court-fee in the suit.

The file No.S.1 received with your letter under reference is returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- .N.M.
21/7

O.C.
Remembrancer of Legal Affairs.

V.VK.
24/4/66.